

requirement. Consequently, specific certification, assurance, and performance requirements are unnecessary. Should problems arise regarding the quality of service provided, MCI may of course bring the matter to the Commission's attention.

IT IS THEREFORE ORDERED that:

1. The parties shall complete their agreement in accordance with the principles and limitations described herein and shall submit their final agreement for Commission review within 60 days of the date of this Order.
2. The cost studies required to complete the Commission's investigation into appropriate pricing as discussed herein shall be filed by BellSouth within 60 days of the date of this Order.

Done at Frankfort, Kentucky, this 20th day of December, 1996.

By the Commission

ATTEST:

  
\_\_\_\_\_  
Executive Director

**APPENDIX 1**

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 96-431 DATED December 20, 1996.**

**BELLSOUTH - MCI LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES**

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
<b>Unbundled Loops*</b> 2-Wire Analog Voice Grade Loop, Per Month Nonrecurring 4-Wire Analog Voice Grade Loop, Per Month Nonrecurring 2-Wire ISDN Digital Grade Loop, Per Month Nonrecurring 2-Wire ADSL/HDSL Loop, Per Month Nonrecurring 4-wire HDSL Loop, Per Month Nonrecurring 4-Wire DS1 Digital Grade Loop, Per Month Nonrecurring	\$18.20 \$58.40 \$25.48 \$58.40 \$29.12 \$58.40 \$18.20 \$58.40 \$25.48 \$58.40 \$60.06 (\$775.00 1st/335.00 add'l)
<b>Network Interface Devices*</b> Network Interface Device Nonrecurring  *BellSouth has included NIDs as a component of its unbundled loops. The Commission in its Order is requiring BellSouth to complete TELRIC Studies to separate the unbundled loop and NID elements.	\$1.80 Study Required
<b>Unbundled Exchange Access IOC</b> 0 - 8 Miles, Fixed Per Month Per Mile, Per Month 9 - 25 Miles, Fixed Per Month Per Mile, Per Month Over 25 Miles, Fixed Per Month Per Mile, Per Month Nonrecurring	\$16.14 \$0.0301 \$17.18 \$0.0726 \$18.41 \$0.0831 Study Required
<b>Unbundled Local Switching**</b> <b>Unbundled Exchange Ports</b> 2-wire Analog, Per Month Nonrecurring 4-wire Analog (Coin), Per Month Nonrecurring 4-wire ISDN DS1, Per Month Nonrecurring 2-Wire ISDN Digital, Per Month Nonrecurring 2-Wire Analog Hunting - per line - Per Month Nonrecurring	\$2.61 \$50.00 1st/18.00 add'l \$3.04 \$50.00 1st/18.00 add'l \$275.48 \$230.00 1st/200.00 add'l \$12.33 \$150.00 1st/120.00 add'l \$0.29 \$3.00
**Nonrecurring rates for unbundled loops have been adjusted downward during negotiations and are not tariffed rates.	

# **BELLSOUTH - MCI m LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES**

<b>NETWORK LOCAL INTERCONNECTION/ELEMENT</b>	<b>COMMISSION Decision</b>
<b>Unbundled Local Usage (Restructured Switching)</b>	
End Office Switching Per MOU	\$0.002562
Tandem Switching Per MOU	\$0.001174
Common Transport Per Mile/MOU	\$0.000624
Common Transport Facilities Termination Per Month	\$0.00036
<b>Local Interconnection [NOTE 1]</b>	
End Office Switching Per MOU	\$0.0021
Tandem Switching Per MOU	\$0.0030
Common Transport Per Mile/MOU	\$0.0009
Common Transport - Facility Termination Per MOU	\$0.0009
Intermediary Tandem Per MOU*	\$0.00200
NOTE 1: Local Interconnection is defined as the transport and termination of local traffic between facility based carriers.	
* The tandem intermediary charge applied only to intermediary traffic and is applied in addition to applicable local interconnection charges.	
<b>Dedicated Transport - DS1</b>	
Per Mile Per Month	\$23.00
Facility Termination Per Month	\$87.00
Nonrecurring	\$100.49
<b>Channelization System - For Unbundled Loops</b>	
Unbundled Loop System (DS1to VG) per sys/per mo.	\$429.33
Nonrecurring	\$525.00
Central Office Interface Per Circuit, Per Month	\$1.26
Nonrecurring	\$8.00
<b>CCS7 Signaling Transport Service</b>	
Signaling Connection Link, Per Month	\$13.86
Nonrecurring	\$510.00
Signaling Termination (Port), Per Month	\$22.70
Signaling Usage, Per 56 Kbps Facility, Per Month	\$395.00
<b>800 Access Ten Digit Screening Service</b>	
800/POTS Number Delivery, Per Query	\$0.0010
800/POTS Number Delivery with Optional complex Features, Per Query	\$0.0011
<b>Line Information Database Access Service</b>	
Common Transport, Per Query	\$0.00006
Validation, Per Query	\$0.00936
Nonrecurring - Establishment or Change	Study Required

# **BELLSOUTH - MCI LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES**

<b>NETWORK LOCAL INTERCONNECTION/ELEMENT</b>	<b>COMMISSION Decision</b>
<b>Operator Services</b>	
<b>Operator Call Processing Access Service</b>	
Operator Provided, Per Minute	
Using BST LIDB	\$1.6016
Using Foreign LIDB	\$1.6249
Fully Automated, Per Attempt	
Using BST LIDB	\$0.0856
Using Foreign LIDB	\$0.1071
<b>Inward Operator Services Access Service</b>	
Verification, Per Call	\$1.00
Emergency Interrupt, Per Call	\$1.111
<b>Directory Assistance Access Service Calls</b>	
Per Call	\$0.3136
<b>Directory Assistance Database Service</b>	
Use Fee, Per DADS Cust's EU Request/Listing	\$0.0193
Monthly Recurring	\$120.76
<b>Direct Access to Directory Assistance Service (DADAS)</b>	
Database Service Charge, Per Month	\$7,235.01
Database Query Charge, Per Query	\$0.0052
Nonrecurring - DADAS Service Establishment	\$1,000.00
<b>DACC Access Service</b>	
Per Call Attempt	\$0.058
Recording Cost Per Announcement	none
Loading Cost Per Audio Unit	none
<b>Number Services Intercept Access Service</b>	
Per Intercept Query	\$0.086
<b>Directory Transport</b>	
Switched Common Transport	
Per DA Service Call	\$0.000175
Switched Common Transport	
Per DA Service Call Mile	\$0.000004
Access Tandem Switched	
Per DA Service Call	\$0.000783
Sw. Local Channel - DS 1 Level, Per Month	\$87.00
Nonrecurring	\$866.91 1st/486.83 add'l
Sw. Dedicated Transport - DS 1 level, Per MI/Per Mo.	\$23.00
Facilities Termination, Per Month	\$90.00
Nonrecurring	\$100.49
DA Interconnection per DA Service Call	\$0.0009
Installation	
NRC - Per Trunk or Signaling Connection	\$915.00 1st/100.00 add'l

**BELLSOUTH - MCL LOCAL INTERCONNECTION AND NETWORK ELEMENT PRICES**

NETWORK LOCAL INTERCONNECTION/ELEMENT	COMMISSION Decision
<b>Collocation</b>	
Application	
Per Arrangement / Per Location - Nonrecurring	\$3,850.00
Space Preparation Fee - Nonrecurring	ICB
Space Construction Fee - Nonrecurring	\$4,500.00
Cable Installation - Per Entrance Cable	\$2,750.00
Floor Space Zone A, Per Square Foot, Per Month	\$5.00
Floor Space Zone B, Per Square Foot, Per Month	\$5.00
Power Per AMP, Per Month	\$5.00
Cable Support Structure, Per Entrance Cable	\$13.35
POT Bay (Optional Point of Termination Bay)	
Per 2-Wire Cross - Connect, Per Month	\$0.06
Per 4-Wire Cross - Connect, Per Month	\$0.15
Per DS1 Cross - Connect, Per Month	\$1.20
Per DS3 Cross - Connect, Per Month	\$8.00
<b>Cross-Connects</b>	
2-Wire Analog, Per Month	\$0.31
4-Wire Analog, Per Month	\$0.62
Nonrecurring 2-wire and 4-wire	\$16.00
DS1, Per Month	\$0.79
Nonrecurring	\$155 1st/27.00 add'l
DS3, Per Month	\$9.98
Nonrecurring	\$155 1st/27.00 add'l
<b>Security Escort</b>	
Basic - 1st half hour	\$41.00
Overtime - 1st half hour	\$48.00
Premium - 1st half hour	\$55.00
Basic - additional	\$25.00
Overtime - additional	\$30.00
Premium - additional	\$35.00

**APPENDIX 1A**

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 96-431 DATED December 20, 1996.**

**AVOIDED COST ANALYSIS**  
**KENTUCKY**  
**BELLSOUTH**  
**CALCULATION BASED ON FCC'S**  
**REPORT & ORDER RELEASED ON AUGUST 8, 1996**

<u>COL. 1</u>	<u>COL. 2</u>	<u>COL. 3</u>	<u>KY PSC</u>
<u>ACCOUNTS DIRECT AVOIDED</u>	<u>AMOUNT</u> <u>1995 REG.</u> (000)	<u>AVOIDED</u> <u>AMOUNT</u> (000)	<u>AMOUNT</u> <u>AVOIDED</u> (000)
A/C 6611 PRODUCT MGT.	7,081	1,622	1,622
A/C 6612 SALES	12,604	11,038	11,038
A/C 6613 PRODUCT ADV.	4,499	4,245	4,245
A/C 6621 CALL COMPLETION	3,318	-0-	*2,489
A/C 6622 NUMBER SERVICES	8,553	-0-	*6,415
A/C 6623 CUSTOMER SERV.	<u>40,635</u>	<u>26,968</u>	<u>26,968</u>
TOTAL DIRECT AVOIDED	76,690	43,873	52,777
<u>ACCOUNTS INDIRECTLY AVOIDED</u> <u>OVERHEAD ACCOUNTS</u>		<u>ALLOC.</u> <u>AMOUNT</u>	
A/C 6711 EXECUTIVE	2,092	175	
A/C 6712 PLANNING	855	71	
A/C 6721 ACCOUNTING & FIN.	5,883	491	
A/C 6722 EXTERNAL RELATIONS	6,594	550	
A/C 6723 HUMAN RESOURCES	7,274	607	
A/C 6724 INFORMATION MGT.	28,278	2,359	
A/C 6725 LEGAL	2,335	195	
A/C 6726 PROCUREMENT	1,915	160	
A/C 6727 RESEARCH & DEV.	1,583	132	
A/C 6728 OTHER GEN. & ADM.	36,471	3,042	
A/C 5301 UNCOLLECTIBLES	<u>5,545</u>	<u>463</u>	
TOTAL OVERHEAD ACCOUNTS	98,825	8,244	9,922
<u>GENERAL SUPPORT ACCOUNTS</u>			
A/C 6121 LAND & BUILDING	15,316	1,278	
A/C 6122 FURN. & ARTWORKS	414	35	
A/C 6123 OFFICE EQPT.	1,203	100	
A/C 6124 GEN. PURPOSE COMP.	<u>15,953</u>	<u>1,331</u>	
TOTAL GENERAL SUPPORT	32,886	2,743	<u>3,302</u>
TOTAL O'HEAD & GEN. SUPPT.	131,711	10,988	13,224
TOTAL DIRECT AVOIDED	43,873		52,777
TOTAL EXPENSES	525,926		525,926
ALLOCATION FACTOR	.0834		.1004
TOTAL AVOIDED COSTS		54,861	66,001
REVENUES SUBJECT TO DISCOUNT		437,947	437,947
WHOLESALE DISCOUNT		12.5%	15.1%



**APPENDIX 1B**

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 96-431 DATED December 20, 1996.**

# COMPUTATION OF RESIDENTIAL/ BUSINESS WHOLESALE RATES

## I BellSouth Sponsored Study

	<u>Amount</u>	<u>%</u>
Residential Revenue	\$236,617,412	57.53
Business Revenue	<u>174,682,359</u>	42.47
	411,299,771	
Residential Expenses	\$23,017,341	59.40
Business Expenses	<u>15,734,166</u>	40.60
	<u>38,751,507</u>	

## II KY PSC Calculation of Separate Discount Rate Based on Recommended Discount Rate (000's)

Revenues	437,947	x	57.53	=	251,951 RES
		x	42.47	=	<u>185,996 BUS</u>
					437,947
Expenses	66,001	x	59.40	=	39,205 RES
		x	40.60	=	<u>26,796 BUS</u>
					66,001
Residential Discount			<u>39,205</u>	=	15.56%
			251,951		
Business Discount			<u>26,796</u>	=	14.41%
			185,996		

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. P-141, SUB 29**

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

<p style="text-align:center">In the Matter of</p> <p>Petition of MCI Telecommunications Corporation For Arbitration of Interconnection with BellSouth Telecommunications, Inc.</p>	<p>) ) ) )</p>	<p><b>ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT</b></p>
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**BY THE COMMISSION:** On December 23, 1996, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by MCI Telecommunications, Inc. (MCI) against BellSouth Telecommunications, Inc. (BellSouth). The RAO required MCI and BellSouth to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On January 22, 1997, MCI filed certain objections to the RAO. BellSouth filed its objections to the RAO on January 23, 1997. Comments regarding the MCI/BellSouth RAO were filed on January 22, 1997, by the Attorney General, Sprint Communications Company L.P. (Sprint), Carolina Telephone and Telegraph Company (Carolina), and Central Telephone Company (Central). The Carolina Utility Customers Association, Inc. (CUCA) filed comments on January 23, 1997. On February 7, 1997, MCI and BellSouth filed their Composite Agreement and a Joint List of Unresolved Issues for consideration by the Commission.

**WHEREUPON,** after carefully considering the objections, comments, and joint list of unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

## **ISSUES RELATED TO COMMENTS/OBJECTIONS**

**ISSUE NO. 1:** What services provided by BellSouth should be excluded from resale?

### **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth is obligated to offer at resale at wholesale rates any telecommunications services it provides at retail to subscribers who are not telecommunications carriers, with certain exceptions, notably those related to cross-class resale, grandfathered or obsolete services, N11, and promotions of under 90 days. With respect to contract service arrangements (CSAs), the Commission found these to be retail services subject to resale.

### **COMMENTS/OBJECTIONS**

**BELLSOUTH:** BellSouth objected to the application of wholesale discounts to CSAs, although BellSouth did not object to the finding that CSAs are retail services subject to resale. The gist of BellSouth's argument was that a requirement to resell CSAs at a wholesale discount would put BellSouth under a permanent competitive handicap whereby it would never beat the competitor's price. BellSouth cited Georgia and Kentucky decisions mandating resale but without the discount and a Louisiana decision concluding that existing CSAs will not be subject to resale while future CSAs will be subject to resale at no discount.

### **DISCUSSION**

The Commission decision cited Paragraph 948 of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket Nos. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which construed Section-251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act) as having created no exceptions for promotional or discounted offerings, "including contract and other customer-specific offerings." The FCC reasoned that a "contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."

The fundamental conflict is that BellSouth contends that it would be permanently disadvantaged if it has to offer CSAs for resale at a discount while the FCC has expressed concern that, to do otherwise, would permit shifting of customers to nonstandard offerings, thus undercutting the intent of TA96. It would also put competitors at an extreme disadvantage.

This conflict has the appearance of a true conundrum. On the one hand, it is a colorable argument that, if BellSouth is compelled to offer all CSAs with the discount, it might be permanently "locked out" from offering CSAs directly to end users. On the other hand, it is also colorable that, if BellSouth does not have to offer the discount, the competitor might be permanently "locked out" from resale of CSAs because there will be no discount margin on which it can compete. Thus, in terms of pure price relative to the CSAs, there appear to be two equally distasteful alternatives.

To resolve this impasse, the Commission believes that it is reasonable to require that CSAs entered into before April 15, 1997, should be subject to resale, but not at a discount, while CSAs entered into after that date will be subject to resale with the discount. The Commission believes it is unreasonable to require the "old" CSAs to be subject to the discount because they were entered into before BellSouth had any notion as to a resale requirement, and they are commonly discounted already. Applying the discount to "new" CSAs only will allow BellSouth the opportunity to adjust its pricing accordingly. At the same time, the "old" CSAs will not be absolutely sheltered from competition, because the competing local provider (CLP) can seek to compete by other means than pure price as, for example, by bundling additional services or offering a higher quality of service. Of course, the resale of CSAs is limited to the specific end user for whom the CSA was constructed and may not be sold to the public-at-large.

## **CONCLUSIONS**

The Commission concludes that CSAs entered into by BellSouth before April 15, 1997, shall be subject to resale at no discount, while BellSouth CSAs entered into after that date shall be subject to resale with the discount.

**ISSUE NO. 2:** What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth and for network elements provided to CLPs by BellSouth?

## **INITIAL COMMISSION DECISION**

The Commission declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms.

## **COMMENTS/OBJECTIONS**

**MCI:** MCI objected to the Commission decision and emphasized that BellSouth must provide nondiscriminatory service, and stated that in the absence of specific performance standards, BellSouth would have no incentive to provide equal quality of service and could create competitive barriers in the marketplace by providing inferior service to MCI.

**SPRINT:** Sprint also objected and emphasized that specific performance standards are necessary for parity. Sprint urged the Commission to require BellSouth to indemnify the CLP for any forfeitures or civil penalties by a BellSouth failure to meet service quality standards.

### **DISCUSSION**

The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards. The Commission viewed the parties as possessing superior expertise in this area.

The Commission continues to believe that it would be a mistake to impose performance standards on the incumbent local exchange company (incumbent LEC or ILEC) at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96.

The Commission notes that the ILECs are expected to provide service to competitors that is at least equal to the service it provides itself.

### **CONCLUSIONS**

The Commission affirms its original decision on this issue.

**ISSUE NO. 3:** Should BellSouth be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by MCI to perform the following:

- Pre-ordering,
- Ordering,
- Provisioning,
- Maintenance/repair, and
- Billing?

### **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth must diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements as requested by MCI to perform pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. Additionally, the Commission found that the electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

## **COMMENTS/OBJECTIONS**

**MCI:** MCI objected to the Commission's failure to set a date certain by which BellSouth is required to provide such interfaces. MCI remarked that the term "promptly" as used in the RAO is a nebulous term. MCI stated that a reasonable date is April 1, 1997. Further, MCI stated that if BellSouth does not meet that deadline, then BellSouth should be required to specify the impediments it faces; outline its plans for developing the required electronic bonding; identify the date by which deployment of such systems will be possible; and detail the interim systems it plans to implement in the absence of electronic bonding.

**CUCA:** CUCA urged the Commission to establish a relatively near-term date by which BellSouth must provide MCI with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing with commitments to deadlines which are mutually satisfactory must be in place by March 31, 1997, with the interfaces developed and in place promptly thereafter and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

## **DISCUSSION**

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997.

The Commission view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that the interfaces should be provided promptly through the development of uniform, industry-wide standards.

## **CONCLUSIONS**

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than July 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

**ISSUE NO. 4: Must BellSouth route calls for operator services and directory assistance services (OS/DA) directly to MCI's platform?**

**INITIAL COMMISSION DECISION**

The Commission declined to require BellSouth to provide customized routing at this time, saying it is not technically feasible, and encouraged the parties to continue working to develop a long-term, industry-wide solution to technical feasibility problems.

**COMMENTS/OBJECTIONS**

**MCI:** MCI pointed out that Finding of Fact No. 5 of the RAO fails to meet the requirements of Section 251 of TA96. Further, the FCC Interconnection Order requires customized routing in each BellSouth switch unless BellSouth establishes by clear and convincing evidence that customized routing is not technically feasible. MCI stated that at least 30% of BellSouth's switches are fully capable of providing customized routing. MCI also cited rulings by the Tennessee, Georgia, and Florida Commissions finding customized routing to be technically feasible through the use of line class codes (LCCs). MCI urged the Commission to consider the logic employed by these three state commissions and the FCC. Customized routing is technically feasible and is necessary to ensure that MCI and BellSouth compete on an equal playing field.

**SPRINT:** Sprint also argued that the Commission erred in declining to require customized routing and cited Section 251(c)(2) of the Act, which imposes on the incumbent LEC the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point with the carrier's network.

**CUCA:** CUCA argued that providing customized routing through the use of LCCs and the advanced intelligent network (AIN) is technically feasible, according to the record, and therefore the Commission violated Sections 251(c)(2) and 251(c)(3) of the Act and the FCC's implementing regulations, by failing to order customized routing.

**DISCUSSION**

The Commission was aware when it issued the RAO that customized routing can be provided through the use of LCCs. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even if they are upgraded. Recognizing that this is not the long-term solution the industry is working on, however, the Commission declined to order the use of LCCs as an interim solution. The Commission was also aware that Bell Atlantic has agreed to provide customized routing through the use of AIN. The Commission



continues to believe it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed.

### **CONCLUSIONS**

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

**ISSUE NO. 5: Must BellSouth brand services sold or information provided to customers on behalf of MCI?**

### **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth should not be required to unbrand services provided to its customers but should be required to rebrand resold OS/DA when customized routing is available. The Commission further concluded that BellSouth should not be required to unbrand or rebrand its uniforms or vehicles and that its employees should not be required to use branded materials provided by MCI but should be allowed to use generic "leave-behind" cards.

### **COMMENTS/OBJECTIONS**

**MCI:** MCI objected to the failure to require BellSouth to brand services or information. Citing Paragraph 971 of the Interconnection Order ("failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes unreasonable discrimination of resale"), MCI argued that BellSouth has not rebutted the presumption that it lacks the capability to brand MCI's services. MCI also objected to the generic "leave-behind" cards.

**ATTORNEY GENERAL:** The Attorney General objected to the Commission's failure to require unbranding of OS/DA until customized routing is in place. The Attorney General argued that permitting BellSouth to brand OS/DA as its own, even if it is providing the service to a competing provider, has the potential to confuse the customers of another carrier. Those customers will call directory assistance or the operator expecting to deal with their own local service provider and instead will get a message that they have connected with a competitor, BellSouth.

**SPRINT:** Sprint argued that the Commission erred in declining to require BellSouth to unbrand services provided to customers. Sprint cited Section 251(c)(4)(B) of the Act, which prohibits BellSouth from imposing unreasonable or discriminatory conditions or limitations on resale; Section 51.513 of the FCC Rules, which provides that where operator, call completion, or directory assistance service is part of the service or service package an ILEC offers for resale, failure by an ILEC to comply with reseller unbranding

or rebranding requests shall constitute a restriction on resale; and Section 251(c)(2)(D), which imposes on BellSouth a duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

## **DISCUSSION**

The Commission's reason for not requiring BellSouth to unbrand OS/DA is explained on page 16 of the RAO: BellSouth could never brand its services, even to its own customers, while the CLPs could brand their services when reached through unique dialing patterns. No new arguments have been presented. With regard to generic "leave-behind" cards, the Composite Agreement between BellSouth and MCI states: "If technician does not have a company specific card available at the time services are performed, the BellSouth technician shall use a generic card." There is no need to address this issue further.

## **CONCLUSIONS**

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

**ISSUE NO. 6:** Should BellSouth be required to allow MCI to have an appearance (e.g. name, logo) on the cover of its white and yellow page directories?

## **INITIAL COMMISSION DECISION**

The Commission concluded that neither the Act nor the FCC's interconnection rules require BellSouth to include the name/logo of MCI on a directory cover. MCI is free to enter into a contract for any services it needs with BellSouth Advertising & Publishing Corporation (BAPCO).

## **COMMENTS/OBJECTIONS**

**BELLSOUTH:** BellSouth notes that the RAO refers to BellSouth's affiliate, BAPCO, as "a wholly-owned subsidiary of BellSouth". However, as indicated in BAPCO's Petition to Intervene, BAPCO is an affiliate but not a subsidiary of BellSouth. BellSouth requests the Commission correct the factual misstatement contained in the RAO to properly reflect BAPCO as the "affiliate and/or agent of BellSouth".

## **DISCUSSION**

The reference to BAPCO in the Evidence and Conclusions for Finding of Fact No. 8 in the RAO should be corrected. BAPCO should be referred to as an affiliate and/or agent of BellSouth rather than a wholly-owned subsidiary of BellSouth.

## **CONCLUSIONS**

The Commission agrees that the RAO should be corrected to properly reflect BAPCO as an affiliate and/or agent of BellSouth.

**ISSUE NO. 7:** Should MCI be allowed to combine unbundled network elements in any manner it chooses?

## **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, that constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. The Commission also concluded that when local switching is purchased as an unbundled network element, vertical services should be included in the price of that element at no additional charge, but that when vertical services are obtained through resale, the discounted resale rate should apply.

## **COMMENTS/OBJECTIONS**

**MCI:** MCI argued that allowing BellSouth to submit a supplemental, unilateral filing on the pricing of unbundled network elements without providing MCI an opportunity to comment or rebut is discriminatory and therefore fails to meet the standards set forth in Section 252(d) of the Act. MCI further argued that permitting BellSouth to characterize the combination of unbundled network elements as a pricing issue would restrict MCI's ability to combine unbundled network elements and would contravene Section 251(c)(3) of the Act.

**BELLSOUTH:** BellSouth objected to the inclusion of vertical services in the rate the CLPs pay for local switching. BellSouth argued that the various functions the Commission has ordered it to include in the local switching function are retail services which should be offered at the retail rates less the appropriate discount. BellSouth also submitted information with respect to "workable criteria" for identifying the combinations of unbundled network elements that constitute resold services. Drawing from recent decisions from Georgia and Louisiana, BellSouth contended that a CLP should bear the burden of persuasively demonstrating that the combination of unbundled elements from

BellSouth does not constitute a resold BellSouth service. BellSouth further contended that if the CLP purchases an unbundled loop and unbundled local switching on behalf of a customer, the presumption should be that the CLP has effectively recombined unbundled network elements in a manner that replicates a retail service. A CLP should bear the burden of persuasively demonstrating that the combination of requested unbundled elements from BellSouth does not constitute a resold BellSouth service. It may carry this burden only by showing that it is not using its own substantive capabilities or functionalities in combination with the unbundled elements from BellSouth to produce its own service offering. If the CLP substitutes anything less than a substantive capability or functionality, the status of the offering would not change. Substitution of a substantive functionality, however, such as when a CLP supplies its own switching capability or local loop, would change the status of the offering, and under those conditions the CLP would pay only the price for the unbundled network elements.

**SPRINT:** Sprint argued that the Commission may not allow BellSouth to treat certain combinations of unbundled network elements as resold services and price them at the wholesale rates, because that would violate Section 251(c)(3) of the Act.

**CUCA:** CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, the decision does interfere with its ability to combine unbundled network elements in any way it deems appropriate. To BellSouth's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of BellSouth's position will eviscerate the unbundled network elements network pricing provisions of the same statute.

## **DISCUSSION**

### **Vertical Services**

BellSouth stated that the fundamental switching capability -- e.g., the ability to provide dial tone and to switch an incoming and outgoing call -- is represented by two rates: a rate for the port, the traffic insensitive portion of the switch, and the local switching charge, a per-minute charge to recognize the traffic sensitive components. In addition, the switch has several other capabilities that can be individually activated at the request of the CLP purchasing the capabilities. Each of these features, when activated, represents a capability that is identical to an existing vertical feature that BellSouth offers on a retail basis. BellSouth argued that it should not be penalized in the price it is allowed to charge

just because the vertical feature happens to be a capability inherent in the switch, rather than a feature that can be accessed by the switch, such as operator services.

BellSouth further argued that the Commission has the authority to price vertical services as it chooses as long as those rates are "just, reasonable, and non-discriminatory." TA96, Section 251(c)(3). Pricing vertical services at their retail rates, less the avoided costs reflected in the wholesale discount, will meet this statutory requirement, while preserving support for "universally available telephone service at reasonably affordable (local exchange) rates," in accordance with the Commission's authority under House Bill 161. BellSouth noted the enormous contribution that vertical services provide to the maintenance of reasonable affordable local exchange rates -- over \$60 million in North Carolina revenue in 1995.

The RAO, of course, does not preclude the pricing of vertical services at their retail rates less the wholesale discount when purchased as resale offerings. It simply requires the inclusion of these features, functions, and capabilities in the price of the unbundled switch element when purchased as such, in accordance with the Act and FCC interpretation. The fact that this is a pricing issue, as BellSouth contends, does not change the plain wording of the statute and the basis of the Commission's initial decision.

#### **Recombination of unbundled network elements**

BellSouth stated that the conclusions reached by the Louisiana Public Service Commission (PSC) on this issue can serve as the framework for identifying the combinations of unbundled elements that constitute resold services and contended that the PSC's analysis closely aligns with the testimony of witnesses Varner and Scheye in this proceeding, both of whom testified that the combination of an unbundled loop and unbundled local switching would replicate BellSouth's retail local service. BellSouth presented an Exhibit C which it said depicts the unbundled elements that, if combined, would recreate existing tariffed local exchange service offered by BellSouth: (1) unbundled loop, including NID/protector, and (2) unbundled local switching.

In the RAO, the Commission found merit in BellSouth's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and policy implications of our decision, we sought workable criteria for identifying combinations of unbundled network elements that constitute resold services. Because of the complexity of the issue, however, we are now of the opinion that even the most detailed definition will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

## **CONCLUSIONS**

Based on the foregoing, and the entire evidence of record, the Commission concludes that our original decision on this issue should be modified to provide that the purchase and combination of unbundled network elements by MCI to produce a service offering that is included in BellSouth's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that MCI is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

The Commission further concludes that its original decision on the pricing of vertical services should be affirmed. Thus, when MCI buys the switch at the unbundled element rate, it will receive vertical services at no additional charge, but when it buys combinations of elements to produce a BellSouth retail service, and thus comes under the resale pricing provisions, it must also pay the wholesale rate for vertical services, if those services are in the retail tariff on the effective date of the Agreement. Vertical services which are not in the retail tariff but which can be provided by the switch will be available at no additional charge.

**ISSUE NO. 8:** Must BellSouth provide MCI with access to BellSouth's unused transmission media or dark fiber?

## **INITIAL COMMISSION DECISION**

The Commission decided that dark fiber is not a telecommunications service. Further, the Commission decided that there was insufficient evidence to conclude that dark fiber is a network element. Therefore, BellSouth is not required to make dark fiber available to MCI.

## **COMMENTS/OBJECTIONS**

**MCI:** MCI states that the FCC did not specifically require that incumbent LECs make available unbundled optical fiber or "dark fiber," because it did not have a sufficient record on which to decide this issue. MCI submits that the FCC did not, however, prohibit the states from making the determination and points out that three other BellSouth states have found dark fiber to be a network element. MCI believes there is a sufficient record before the Commission to establish a similar finding.

## **DISCUSSION**

MCI opines that the record is sufficient to support a finding and conclusion that dark fiber is a network element within the meaning of the Act. However, MCI did not cite evidence where the record reveals that dark fiber is a facility or equipment used in the provision of a telecommunications service, thereby meeting the definition of network element under the plain language of the Act.

The Act defines "network element" as follows:

**"(29) NETWORK ELEMENT.** —The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

As stated in the RAO, unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element. Finally, as noted in the RAO, the FCC did not address and require the unbundling of the incumbent LECs' dark fiber but did state it would continue to review and revise its rules in this area as necessary.

## **CONCLUSIONS**

Based upon the foregoing and the entire evidence of record, the Commission affirms its original decision on this issue.

**ISSUE NO. 9:** Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

## **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are \$151,103,000.

## **COMMENTS/OBJECTIONS**

**BELLSOUTH:** BellSouth objected to the Commission's decision to apply a 90% avoided cost factor to Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product

Advertising, and 6623 - Customer Services Expenses to calculate avoided costs for these accounts. BellSouth argued that actual avoided costs as determined by BellSouth upon internal review of its financial system should be reflected in the avoided cost analysis as the FCC's "preferred method" of making the avoided cost determination.

## **DISCUSSION**

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. In the FCC Interconnection Order, the FCC provided that the 90% avoided factor represented a reasonable estimate of avoided costs for Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission view was that this avoided cost factor is reasonable, in addition, since the Company's proposed avoided costs reflected in its avoided cost study were derived internally and, therefore, not verifiable. BellSouth's avoided cost study represents BellSouth's estimate of its avoided costs, not actual avoided costs.

The Commission continues to believe that it is reasonable to apply a 90% avoided cost factor to Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission further believes that it would be incorrect to reflect avoided costs for these accounts based on Company-generated avoided costs which are not verifiable and not actual avoided costs. The Company's avoided cost study simply represents BellSouth's estimate of its avoided costs, not actual avoided costs.

## **CONCLUSIONS**

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

**ISSUE NO. 10:** What are the appropriate wholesale rates for BellSouth to charge when a competitor purchases BellSouth's retail services for resale?

## **INITIAL COMMISSION DECISION**

The Commission concluded that BellSouth's appropriate wholesale discount rates are 21.5% for residential services and 17.6% for business services.

## **COMMENTS/OBJECTIONS**

**CUCA:** CUCA objected to the Commission's decision concerning class-specific wholesale discount rates (residential rate and business rate). CUCA stated that the



Commission erred by adopting class-specific wholesale discount rates without a detailed exploration of the appropriateness of the allocation process used to develop the class-specific resale discounts.

**SPRINT:** Sprint also objected to the Commission's decision concerning the wholesale discount rate. Sprint viewed the Commission's wholesale discount rate as an interim rate. Sprint recommended that the Commission establish permanent wholesale discount rates on the basis of each company's actual avoided costs.

## **DISCUSSION**

Concerning class-specific wholesale rates, the Commission's view was that if the information is available, separate wholesale rates should be calculated for business and residential services. Since BellSouth's avoided cost study provided a basis for determining separate residential and business wholesale discount rates, the Commission believed that it was appropriate to use the information to calculate separate wholesale discount rates. Although neither the FCC Interconnection Order nor the Act mandates using separate wholesale discount rates, other State Commissions across the country including California, New Hampshire, Georgia, Kentucky, and Florida have ordered separate wholesale discount rates for residential and business services.

The Commission continues to believe that it is appropriate to establish separate wholesale discount rates for both residential and business services since adequate information is available to make the calculation of separate wholesale discount rates.

Addressing Sprint's comments, the Commission in no way viewed the ordered wholesale discount rates as interim. The Commission did follow the basic methodology of the FCC Interconnection Order. However, the Commission did not order interim wholesale discount rates. The Commission prepared its own avoided cost analysis based on the entire record and established permanent wholesale discount rates which meet the requirements of the Act.

The Commission's position is that the RAO did not establish interim wholesale discount rates and that the wholesale discount rates do not have to be calculated based on BellSouth's estimation of its avoided costs.

## **CONCLUSIONS**

Based on the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.